

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Branch Motor Express Co. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Corporation Franchise Tax :
under Article 9 of the Tax Law
for the Years 1970 - 1974. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 16th day of May, 1980, he served the within notice of Decision by certified mail upon Branch Motor Express Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Branch Motor Express Co.
114 Fifth Ave.
New York, NY 10011

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
16th day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Branch Motor Express Co. :
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for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Corporation Franchise Tax :
under Article 9 of the Tax Law :
for the Years 1970 - 1974. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 16th day of May, 1980, he served the within notice of Decision by certified mail upon John C. Messersmith the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. John C. Messersmith
Branch Motor Express Co.
114 Fifth Ave.
New York, NY 10011

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
16th day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

May 16, 1980

Branch Motor Express Co.
114 Fifth Ave.
New York, NY 10011

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
John C. Messersmith
Branch Motor Express Co.
114 Fifth Ave.
New York, NY 10011
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
BRANCH MOTOR EXPRESS CO.	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Corporation Taxes under	:	
Article 9 of the Tax Law for the Years	:	
1970 through 1974.	:	

Petitioner, Branch Motor Express Co., 114 Fifth Avenue, New York, New York 10011, filed a petition for redetermination of a deficiency or for refund of corporation taxes under Article 9 of the Tax Law for the years 1970 through 1974.

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 9, 1977 at 10:45 A.M. Petitioner, Branch Motor Express Co., appeared by John C. Messersmith. The Audit Division appeared by Peter Crotty, Esq. (Laurence Stevens, Esq., of counsel).

ISSUE

Whether petitioner should be permitted to offset certain accounts receivable against certain accounts payable in determining gross assets under section 183.2 of the Tax Law.

FINDINGS OF FACT

1. On April 9, 1976, the Audit Division issued to petitioner notices of deficiency covering the following periods and in the following amounts, plus interest:

<u>Period Beginning</u>	<u>Tax</u>
1/1/70	\$ 928.13
1/1/71	1,044.42
1/1/72	3,121.37
1/1/73	5,776.90
1/1/74	3,140.88

2. Branch Motor Express Co. (herein, "Branch Motor") is a Pennsylvania corporation and a wholly-owned subsidiary of Branch Industries, Inc., a Delaware corporation. Both corporations are at the top of a corporate network of common carrier and real estate subsidiaries. The common carriers involved are Branch Motor Express Co., Motor Freight Corp., and Middle Atlantic Transportation Co., Inc. The real estate companies involved are The Jerbran Corp., and Redbran Realty Corp. In addition, New Bran, Inc. and Atlantic Trailer Service, Inc. were 100 percent owned subsidiaries which leased equipment and a small amount of real estate to the carriers.

3. At any given period of time, there would be criss-crossing flows of cash among the various subsidiaries. For example, a loan might be made by a realty company and paid over to a trucking company for the purpose of buying equipment. Or a trucking company might lend money for maintenance or upkeep of a realty company terminal. For the years in question, these various criss-crossing loans passed through Branch Motor's New York office.

4. Petitioner seeks to consolidate the accounting entries for all these loan transactions. It would like to total all accounts payable to subsidiaries. This would reflect money that Branch Motor has taken from subsidiaries and channeled to other subsidiaries. It would then like to total up the accounts receivable from subsidiaries. These accounts receivable reflect debts owed to Branch Motor by companies that used funds for equipment purchases, etc. Then for the given year payables would be offset against receivables to produce one final figure. In some years under consideration the payables would exceed the receivables and would produce a net loss. In other years, the receivable figure would be much less, after offset, than it would be if all the receivables from subsidiaries were added up. In short, this offsetting process would eliminate or reduce the value of the asset, accounts receivable, that Branch

Motor would show on its books. This netting process would not include ordinary trade accounts receivable generated in the course of operations.

5. On December 31, 1975, the equipment companies merged with Branch Motor Express Co. From 1975 onward, petitioner has employed the netting out process. This procedure has not been contested by the Corporation Tax Bureau.

CONCLUSIONS OF LAW

A. That section 183.1 of the Tax Law imposes a tax based on the amount of capital stock of transportation and transmission corporations and associations based on the amount of capital stock within New York State. Section 183.2 provides, in pertinent part:

"The measure of the amount of capital stock in this state,...(with certain exceptions)...shall be such a portion of the issued capital stock as the gross assets, exclusive of obligations issued by the United States and cash on hand and on deposit, employed in any business within the state, bear to the gross assets, exclusive of obligations issued by the United States and cash on hand and on deposit, wherever employed in business."

B. That the accounts receivable did not constitute "cash" as that term is used in section 183.2 of the Tax Law.

C. That the measure set forth in section 183.2 of the Tax Law is a comparison of gross assets employed within the state to gross assets employed anywhere.

Accordingly, petitioner is not permitted to offset an asset (accounts receivable) with a liability (accounts payable). Accounts receivable must be included in the calculation without regard to accounts payable.

D. That the petition of Branch Motor Express Co. is denied and the Notices of Deficiency are sustained.

DATED: Albany, New York

MAY 16 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER